

**ST 06-9**

**Tax Type: Sales Tax**

**Issue: Reasonable Cause on Application of Penalties**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS</b>	)	
	)	
v.	)	<b>Docket # 00-ST-0000</b>
	)	<b>IBT # 0000-0000</b>
<b>JOHN DOE d/b/a ABC'S AUTO SALES</b>	)	
<b>Taxpayer</b>	)	<b>Request for Abatement</b>

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, appearing *pro se*.

Synopsis:

John Doe ("taxpayer") operated ABC's Auto Sales and filed several forms ST-556, Sales Tax Transaction Returns, after the due date for the returns. The Department of Revenue ("Department") assessed several penalties for the late filing of the returns and the late payment of the taxes. The taxpayer filed a request for an abatement of the penalties. The Department issued a letter denying the taxpayer's request for abatement, and the taxpayer timely protested the denial. An evidentiary hearing was held during which the taxpayer indicated that he was incarcerated with the Illinois Department of Corrections in September 2002 and remained incarcerated until 2004. From October 1,

2003 to November 17, 2003, the Department had an amnesty period during which the taxpayer could have avoided paying interest and penalties on the amount that was owed. The taxpayer claims that the penalties should be abated because he was unaware of the amnesty period due to his incarceration. After reviewing the record, it is recommended that the Department's determination be upheld.

FINDINGS OF FACT:

1. The taxpayer operated ABC's Auto Sales from 1996 through March 2000. (Tr. p. 10)

2. The taxpayer filed several forms ST-556, Sales Tax Transaction Returns, after the due date for the returns. The Department assessed the taxpayer penalties for the late filing of the returns and late payment of the taxes. (Dept. Ex. #1)

3. The taxpayer was arrested in June 2002 and entered the Department of Corrections in September 2002. He was released in 2004. (Taxpayer Ex. #1; Tr. p. 10)

4. The returns were filed late but were filed before the taxpayer entered the Department of Corrections. (Tr. p. 12)

5. On July 5, 2005, the Department issued a letter denying the taxpayer's request for abatement of the penalties. The letter was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

The Department imposed penalties for the late filing of the returns and the late payment of the taxes pursuant to section 3-3 of the Uniform Penalty and Interest Act ("UPIA") (35 ILCS 735/3-1 *et seq.*). Section 3-8 of the UPIA provides a basis for the abatement of the section 3-3 penalties and states in part as follows:

“The penalties imposed under the provisions of Sections 3-3, 3-4, and 3-5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department.” (35 ILCS 735/3-8)

The Department’s regulations concerning reasonable cause provide in part as follows:

“The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill.Admin.Code §700.400(b)

The taxpayer has not provided any explanation as to why he did not timely file the returns or pay the taxes. Without any explanation or reasons why the returns were not filed and the taxes were not paid in a timely fashion, it must be concluded that the taxpayer has not established reasonable cause for the abatement of the penalties.

In addition, the only argument raised by the taxpayer is that while he was incarcerated, the Department notified taxpayers about the amnesty period, and he did not receive notice of it due to his incarceration. He asks that the penalties and interest be abated for this reason.

The Tax Delinquency Amnesty Act (35 ILCS 745/1 *et seq.*) provided relief from interest and penalties for taxes paid to the Department from October 1, 2003 through November 17, 2003. The Department’s amnesty regulation explains that if a taxpayer did not have a tax due but incurred a penalty for the late payment of a tax, this taxpayer may not participate in the amnesty program. See 86 Ill. Admin. Code, ch. 1, §521.105(h)(2). The letter issued by the Department to the taxpayer in this case shows a tax due for some of the assessments, and for the others it appears as though the tax was paid and only the

penalties and interest are now due. It is not clear from the record when the tax was paid, but if it was paid prior to the amnesty period, then the penalties and interest related to this tax would not have been eligible for amnesty relief.

Furthermore, the Department's amnesty regulation states that the "Department has no duty to notify taxpayers of liabilities that may make them eligible for participation in the Amnesty Program." 86 Ill. Admin. Code, ch. 1, §521.105(a). The regulation adds that the failure of the Department to notify a taxpayer of the existence of a liability eligible for amnesty shall not be grounds for abating the penalty imposed under section 3-3 of the UPIA. *Id.* The penalties and interest in this case must therefore be upheld.

Recommendation:

For the foregoing reasons, it is recommended that the Department's determination be upheld.

Linda Olivero  
Administrative Law Judge

Enter: April 12, 2006